

United States Government

NATIONAL LABOR RELATIONS BOARD

Region 27

600 17th Street – 7th Floor North Tower

Denver, CO 80202-5433

Telephone: 303-844-3551

Facsimile: 303-844-6249

www.nlr.gov

January 27, 2005

APWU, Local 42
P.O. Box 50442
Provo, UT 84605

Re: U.S. Postal Service
Case 27-CA-19416-1

Dear Sir or Madam:

The Region has carefully considered the charge filed against U.S. Postal Service alleging it violated the National Labor Relations Act. As explained below, I have decided that further proceedings on the charge should be handled in accordance with the Board's deferral policy.

Deferral Policy: Under the Board's deferral policy as set forth in *Collyer Insulated Wire*, 192 NLRB 837 (1971) and *United Technologies Corp.*, 268 NLRB 557 (1984), this Agency will withhold making a final determination on certain arguably meritorious unfair labor practice charges when a grievance involving the same issue can be processed under the grievance/arbitration provisions of the applicable contract. This policy is based, in part, on the preference that the parties should resolve certain issues through their contractual grievance procedure in order to achieve a prompt, fair and effective settlement of their dispute. Therefore, if an employer agrees to waive contractual time limits and process the related grievance through arbitration if necessary, the Regional office will defer the charge. However, this policy requires that a charge be dismissed if the charging party thereafter fails to promptly file and attempt to process a grievance on the subject matter of the charge.

Decision to Defer: Based on our investigation, I am deferring further proceedings on the charge to the grievance/arbitration process for the following reasons:

1. The charge raises the following issues: Whether the Employer made a unilateral change and violated Section 8(a)(5) of the Act when denied a Union steward's request for leave without pay to attend an APWU seminar in Billings, Montana from November 17 to November 19, 2004.
2. The Employer and the Union have a collective-bargaining agreement currently in effect that provides for final and binding arbitration.

3. The Employer is willing to process a grievance concerning the above allegations in the charge, and will arbitrate the grievance if necessary. The Employer has also agreed to waive any time limitations in order to ensure that the arbitrator addresses the merits of the dispute.
4. Since the above allegations in the charge appear to be covered by certain provisions of the collective-bargaining agreement, it is likely that the allegations may be resolved through the grievance/arbitration procedure.

Further Processing of the Charge: As explained below, while the charge is deferred, the Region will monitor the processing of the grievance and under certain circumstances will resume processing the charge.

Charging Party's Obligation: Under the Board's Collyer deferral policy, the Charging Party has an affirmative obligation to file a grievance, if a grievance has not already been filed. If the Charging Party fails either to promptly file or submit the grievance to the grievance/arbitration process, or declines to have the grievance arbitrated if it is not resolved, I will dismiss the charge.

Charged Party's Conduct: If the Charged Party prevents or impedes resolution of the grievance, raises a defense that the grievance is untimely filed or refuses to arbitrate the grievance, I will revoke deferral and resume processing of the charge.

Inquiries and Requests for Further Processing: Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and whether continued deferral is appropriate. However, I will accept and consider at any time requests and supporting evidence submitted by any party to this matter for dismissal of the charge, for continued deferral of the charge, or for issuance of a complaint.

Notice to Arbitrator Form: If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form to ensure that the Region receives a copy of an arbitration award when the award is sent to the parties.

Review of Arbitrator's Award: If the grievance is arbitrated, the Charging Party may request this office to review the arbitrator's award. The request must be in writing and addressed to me. The request should analyze whether the arbitration process was fair and regular, whether the unfair labor practice allegations in the charge were considered and decided by the arbitrator, and whether the award is consistent with the Act. Further guidance on the nature of this review is provided in *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984).

Charging Party's Right to Appeal: The National Labor Relations Board Rules and Regulations permit Charging Party to obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board. If the Charging Party wishes to file an appeal, please note the following:

Appeal Due Date: The appeal must be received by the General Counsel in Washington, DC by the close of business at 5:00 p.m. (EST or EDT, as appropriate) on January 26, 2005. However, if the appeal is mailed, it will be considered timely if it is postmarked no later than one day before the due date. The appeal may not be filed by facsimile transmission.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant an extension of time to file the appeal. A request for an extension of time may be made by facsimile transmission or through the Internet. The fax number is (202) 273-4283. Special instructions for requesting an extension of time over the Internet are set forth in the attached Access Code Certificate. Any request for an extension of time must be received no later than the appeal due date indicated above. Unless filed through the Internet, a copy of any request for extension of time should be sent to me.

Appeal Contents: You are encouraged to submit a complete statement setting forth the facts and the reasons why you believe the decision to defer was incorrect. However, the enclosed Notice of Appeal Form (NLRB 4767) by itself will be treated as an appeal if timely filed upon the General Counsel and me.

Address for Appeal: The appeal should be sent to the General Counsel of the National Labor Relations Board, Office of Appeals, 1099 14th Street, N.W., Washington, D.C. 20570. A copy of the appeal should be sent to me.

Notice to Other Parties of Appeal: The Charging Party must notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is sent to the General Counsel and to me, please complete the enclosed Notice of Appeal Form (NLRB 4767) and send one copy of the form to all parties and representatives whose names and addresses are set forth in this letter.

Sincerely,

B. Allan Benson, Regional Director.

B. Allan Benson
Regional Director

BAB/NSB/stm

Enclosures: Form NLRB 4767, Notice of Appeal
Form NLRB 4938a, Procedures for Filing an Appeal
Form NLRB 5433, Notice to Arbitrator
Form NLRB 5503, Access Code Certificate

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cc:

Office of the General Counsel
c/o Office of Appeals
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

U.S. Postal Service
Mr. Phil Baum
936 South 250 East
Provo, UT 84605

U.S. Postal Service
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Salem, UT 84653

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

NOTICE OF APPEAL

To:

Date:

Please be advised that an appeal is being taken to the Office of the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in:

Case Name

U.S. Postal Service

Case No.

27-CA-19416-1

(If more than one case number, include all case numbers in which appeal is taken.).

(Signature)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
PROCEDURES FOR FILING AN APPEAL

Pursuant to the National Labor Relations Board Rules and Regulations you may obtain a review of this action by **FILING AN APPEAL WITH THE GENERAL COUNSEL** of the National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570, **AND A COPY** with me. This appeal must contain a complete statement setting forth the facts and the reasons upon which it is based. The **appeal must be received by the General Counsel in Washington, DC** by the close of business at 5:00 p.m. [EST or EDT, as appropriate] on **January 26, 2005**. The appeal **MAY NOT** be filed by facsimile transmission.

Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. Requests for extension of time **MAY** be filed by facsimile transmission, or through the Internet, and are due on or before the date and time set forth above. **[Special instructions for requesting an extension of time over the Internet are set forth in the attached Access Code Certificate.]** A copy of any such request for extension of time should be submitted to me.

If you mail the appeal or request for extension of time, it should be postmarked no later than one day before the due date set forth above.

If you file an appeal, please complete the notice forms enclosed with the attached letter and send one copy of the form to each of the other parties whose names and addresses are listed. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal to me within the time stated above.

United States of America
NATIONAL LABOR RELATIONS BOARD

NOTICE TO ARBITRATOR

TO: _____
(Arbitrator)

(Address)

NLRB Case Number
Case 27-CA-19416-1

NLRB Case Name:

U.S. Postal Service

A determination has been made by the Regional Director of Region 27 of the National Labor Relations Board to administratively defer to arbitration the further processing of the NLRB charge in the above-noted matter. Further, both parties to the NLRB case have agreed to proceed to arbitration before you in order to resolve the dispute underlying the NLRB charge. So that the Regional Director can be promptly informed of the status of the arbitration, the undersigned hereby requests that a copy of the arbitration award be forwarded to the **B. Allan Benson, Regional Director , 700 North Tower , Dominion Plaza, 600 – 17th Street, Denver, CO 80202-5433** at the same time that it is sent to the parties to the arbitration.

(Name)

(Title)